

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of a Decision of the
Universal Service Administrator by
Howe Independent School District 67
Howe, Oklahoma
Schools and Libraries Universal Service
Support Mechanism
File No. SLD-416164
CC Docket No. 02-6

ORDER

Adopted: August 17, 2009

Released: August 17, 2009

By the Acting Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we deny an appeal of a decision by the Universal Service Administrative Company (USAC) that rescinded funding already committed to the Howe Independent School District 67 (Howe ISD) for discounted services under the schools and libraries universal service support mechanism (also known as the E-rate program) for funding year 2004. We find that Howe ISD requested ineligible services and thus direct USAC to continue its commitment adjustment recovery actions regarding this matter.

II. BACKGROUND

2. Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible telecommunications services, Internet access, and internal connections. Applicants may only seek support for services eligible for support. Each year, the Commission releases a list of eligible services to assist applicants in their efforts to request only eligible

1 Howe Independent School District 67, Howe, Oklahoma, CC Docket No. 02-6, Request for Review (filed Oct. 17, 2006) (Request for Review). Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of USAC may seek review from the Commission. 47 C.F.R. § 54.719(c). E-rate funding year 2004 began on July 1, 2004, and ended on June 30, 2005.

2 47 C.F.R. §§ 54.501-54.503.

3 See 47 C.F.R. § 54.504; Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 at 17 (October 2000) (FCC Form 471 Instructions) (stating that applicants may not seek support for ineligible services, entities, or uses); see also Request for Review by Chelmsford Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., File No. SLD-121771, CC Dockets No. 96-45 and 97-21, Order, 17 FCC Rcd 761, 762, para. 3 (Com. Car. Bur. 2002).

services.⁴ When USAC reviews an application and identifies an ineligible service, it will deny funding for that service.

3. Howe ISD's Request for Review. On January 31, 2004, Howe ISD timely filed its FCC Form 471 with USAC for funding year 2004.⁵ On January 11, 2005, USAC issued a Funding Commitment Decision Letter (FCDL) to Howe ISD, approving \$71,077.80 for the multipoint control unit requested in Funding Request Number (FRN) 1143982.⁶ On February 2, 2005, USAC issued an FCC Form 486 Funding Notification Letter to Howe ISD, indicating that USAC had received Howe ISD's FCC Form 486 and that Howe ISD could begin submitting invoices to USAC for reimbursement.⁷ On March 1, 2005, USAC received an invoice from Apple Computer, Howe ISD's service provider, in the amount of \$69,736.20 for work performed on February 15, 2005.⁸ Subsequently, on January 24, 2006, USAC sent a notification of commitment adjustment (COMAD) letter to Howe ISD, reducing FRN 1143982 by \$65,250.00 because funding was sought for ineligible application software in addition to the multipoint control unit.⁹ The adjusted funding commitment for FRN 1143982 was \$5,827.80.¹⁰ In the COMAD letter, USAC explained that funding was provided for ineligible software licenses for Marratech E-Meeting Portal, Auditorium 1 and Concurrent 30.¹¹ Prior to the COMAD, USAC had disbursed \$6,127.20 for FRN 1143982.¹² On March 23, 2006, Howe ISD appealed to USAC.¹³

⁴ See 47 C.F.R. § 54.522; see also, e.g., Funding Year 2004 Eligible Services List of the Schools and Libraries Support Mechanism (rel. Oct. 10, 2003) (Funding Year 2004 ESL).

⁵ FCC Form 471, Howe Independent School District 67 (filed Jan. 31, 2004) (Howe ISD FCC Form 471).

⁶ Funding Commitment Decision Letter from Schools and Libraries Division, Universal Service Administrative Company, to Lance Ford, Howe Independent School District 67 (dated Jan. 11, 2005). USAC approved in full, in the amount of \$580,361.58, the eleven other funding requests for internal connections in Howe ISD's application. See *id.*

⁷ FCC Form 486 Funding Notification Letter from Schools and Libraries Division, Universal Service Administrative Company, to Lance Ford, Howe Independent School District 67 (dated Feb. 2, 2005). To help USAC ensure that universal service support is paid only for services that have actually been delivered, applicants must verify the start date of services and submit a Receipt of Service Confirmation Form (FCC Form 486). See USAC website, Schools and Libraries Program, Begin Receipt of Services, <http://www.universalservice.org/sl/applicants/step10/> (last visited Aug. 17, 2009).

⁸ See Invoice No. 540719, submitted by Apple Computer to USAC (Mar. 1, 2005) (Apple Computer Invoice).

⁹ Notification of Commitment Adjustment Letter from Schools and Libraries Division, Universal Service Administrative Company, to Lance Ford, Howe Independent School District 67 (dated Jan. 24, 2006) (Howe COMAD Letter).

¹⁰ *Id.*

¹¹ *Id.* See <http://www.marratech.com>.

¹² See Howe COMAD Letter.

¹³ See Letter of Appeal to the Funding Commitment Adjustment Report, from Lance Ford, Howe Independent School District 67, to Schools and Libraries Division, Universal Service Administrative Company (dated Mar. 23, 2006).

4. On October 2, 2006, USAC denied Howe ISD's appeal, reiterating that the Marratech E-meeting software was ineligible to receive E-rate support.¹⁴ Subsequently, on October 17, 2006, Howe ISD filed a request for review with the Commission.¹⁵ In its request for review, Howe ISD argues that the products in question – the Marratech E-Meeting portal, Auditorium 1 and Concurrent 30 licenses – are eligible per the Funding Year 2004 ESL under “Video Components” as a multipoint control unit.¹⁶ Howe ISD argues that the equipment was originally approved by USAC, only to be deemed ineligible two years after the initial request and one year after it was initially funded.¹⁷

III. DISCUSSION

5. We deny Howe ISD's appeal of USAC's decision to rescind funding already committed to Howe ISD for discounted services under the E-rate program for funding year 2004. Sections 54.502 and 54.503 of the Commission's rules provide that applicants shall receive support only for eligible services.¹⁸ The record demonstrates that Howe ISD sought funding for ineligible services – Marratech E-Meeting portals and associated products.¹⁹ Howe initially requested funding for a multipoint control unit.²⁰ When USAC received the invoice for FRN 1143982, however, it became clear that the funding request also included software applications.²¹ A multipoint control unit is eligible under the Funding Year 2004 ESL, but an E-Meeting portal allows for application sharing between users and, as such, is specified as an ineligible service.²² Therefore, we find that USAC correctly characterized those services as ineligible and correctly reduced the funding request for FRN 1143982. Accordingly, we deny Howe ISD's request for review and direct USAC to continue any commitment adjustment recovery actions regarding this matter.

IV. ORDERING CLAUSES

6. ACCORDINGLY, IT IS ORDERED that, pursuant to the authority delegated under sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to authority delegated in sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), the request for review filed by Howe Independent School District 67, Howe, Oklahoma IS DENIED and REMANDED to USAC for further processing consistent with this order.

¹⁴ Administrator's Decision on Appeal, Schools and Libraries Division, Universal Service Administrative Company (dated Oct. 2, 2006).

¹⁵ Request for Review at 1.

¹⁶ *See id.*; Funding Year 2004 ESL at 27.

¹⁷ Request for Review at 2.

¹⁸ 47 C.F.R. §§ 54.502, 54.503.

¹⁹ *See supra* para. 3.

²⁰ Howe ISD FCC Form 471, FRN 1143982.

²¹ *See* Apple Computer Invoice.

²² Funding Year 2004 ESL at 25 (ineligible software) and 36 (eligible multipoint control unit). The Funding Year 2004 ESL states that “Software such as word processor, spreadsheet, graphics programs, etc. that is accessed directly by end-users is not eligible for discount.” *Id.*

7. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

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